TR Randie ak Bundan & Ors (occupants and/or house owners of a long house at Brit Lama, Sungei Brit, Marudi) v Penghulu Changgai ak Maoh & Anor

HIGH COURT (MIRI) — SUIT NO MYY-22–8/4 OF 2012
STEPHEN CHUNG J
28 FEBRUARY 2013

Native Law and Custom — Dispute over ownership — Longhouse — Application for injunction restraining from demolition of old longhouse — New longhouse built near existing old longhouse — Occupants of old longhouse moved to new longhouse — Whether occupants already moved out from old longhouse — Whether occupants have rights under native customs to claim old longhouse

When the defendants commenced to demolish a longhouse ('the old longhouse') without first informing the plaintiffs and 69 other occupants, the plaintiffs applied for an injunction restraining them from doing so. The plaintiffs submitted that the *jawatan kuasa kemajuan kampung* ('JKKK') of the longhouse intended to build a new longhouse to replace the old longhouse but the plan was put on hold because some of the residents objected to the plan and lacked sufficient funds. The plaintiffs then built a new longhouse near the old longhouse. However, the plaintiffs alleged that they continued living and maintaining their old *bilik* at the old longhouse as they reared animals and continued to pay the utility bills. Dispute arose when the defendants expressed their intention to demolish the old longhouse and to rebuild a new longhouse. This was objected by the plaintiffs as it was averred that they have not moved out from the old longhouse because the new longhouse was only 100 metres away from the old longhouse. However, the defendants argued that when the first plaintiff and his followers moved out from the old longhouse, they emptied all their belongings and the *bilik* were never occupied ever since. The defendant submitted that under Adat Iban, once the first plaintiff and his followers moved out from the longhouse, they possessed no rights on the old longhouse. Their only rights to the longhouse, if it was dismantled, was that they could retrieve the timber from their own *bilik* and *ruai*. The defendants contended that the first plaintiff and his followers could have asked or arranged for some of their children to stay back and continue to occupy their *bilik* in the old longhouse when they moved out to signify their intentions and rights to continue to occupy their *bilik* at the old longhouse.

Held, dismissing the application with costs of RM15,000:

(1) The first plaintiff and his followers had moved out in stages from the old

longhouse to the new longhouse. They moved out with the agreement of the other residents of the old longhouse. The first plaintiff and the 69 others did not pay any *tunggu* but only provided *genselan* to the residents of the old longhouse in accordance with Adat Iban, customs and traditions. Therefore, they no longer belonged to the old longhouse. Under Adat Iban, they have no more say or rights to the old longhouse. Their only rights were to take the timber from their own *bilik* and *ruai* after the longhouse had been dismantled (see paras 16 & 18).

(2) The plaintiffs did not attend nor were involved in the decision at the meeting of the residents of the old longhouse to demolish the old longhouse and to build the new longhouse at the site of the old longhouse. The first plaintiff had complained to the defendant and the late *penghulu* but the late *penghulu* again approved the demolition of the old longhouse and for the new longhouse to be built. The plaintiffs had withdrawn the suit against the late *penghulu* and it was implicit that the late *penghulu* was right to approve the decisions of the residents of the old longhouse (see para 20).

(3) There was no basis for the plaintiffs to object to the decisions of the residents of the old longhouse which were approved by the late *penghulu* because the plaintiffs no longer belonged to the old longhouse. These were also not the basis to restrain the defendant and the residents of the old longhouse from demolishing the old longhouse because the plaintiffs did not have any rights to the old longhouse under Adat Iban (see para 21).

[Bahasa Malaysia summary

Apabila defendan-defendan mula merobohkan sebuah rumah panjang ('rumah panjang lama') tanpa terlebih dahulu memaklumkan kepada plaintif-plaintif dan 69 penghuni lain, plaintif-plaintif telah memohon injunksi yang menghalang mereka daripada berbuat demikian. Plaintif-plaintif menghujahkan bahawa jawatan kuasa kemajuan kampung ('JKKK') rumah panjang tersebut merancang untuk membina sebuah rumah panjang baru bagi menggantikan rumah panjang lama tetapi rancangan tersebut telah ditangguhkan kerana beberapa penduduk telah membantah rancangan tersebut dan tidak mempunyai dana yang mencukupi. Plaintif-plaintif kemudian membina sebuah rumah panjang yang baru berhampiran dengan rumah panjang lama tersebut. Walau bagaimanapun, plaintif-plaintif mendakwa bahawa mereka terus menghuni dan menyelenggara bilik lama mereka di rumah panjang lama tersebut kerana mereka membela haiwan-haiwan dan masih membayar bil-bil utiliti. Pertikaian timbul apabila defendan-defendan menyatakan hasrat mereka untuk merobohkan rumah panjang lama dan untuk membina semula rumah panjang yang baru. Ini dibantah oleh plaintif-plaintif kerana adalah ditegaskan bahawa mereka tidak berpindah keluar daripada rumah panjang lama kerana rumah panjang yang

baru hanya 100 meter dari rumah panjang lama. Walau bagaimanapun, defendan-defendan menghujahkan bahawa apabila plaintif pertama dan pengikut-pengikutnya berpindah keluar dari rumah panjang lama tersebut, mereka telah mengosongkan semua barang mereka dan bilik tersebut tidak pernah dihuni sejak itu. Defendan-defendan menghujahkan bahawa di bawah Adat Iban, sebaik sahaja plaintif pertama dan pengikut-pengikutnya berpindah keluar dari rumah panjang, mereka tidak memiliki hak ke atas rumah panjang lama. Hak mereka ke atas rumah panjang tersebut hanya, jika ia dibuka, adalah bahawa mereka boleh mendapatkan semula kayu dari bilik dan ruai mereka sendiri. Defendan-defendan menegaskan bahawa plaintif pertama dan pengikut-pengikutnya boleh meminta atau mengaturkan agar beberapa orang anak mereka tinggal dan terus menghuni bilik mereka di rumah panjang lama apabila mereka berpindah keluar untuk menunjukkan hasrat-hasrat dan hak-hak mereka untuk terus menghuni bilik mereka di rumah panjang lama.

Diputuskan, menolak permohonan dengan kos sebanyak RM15,000:

(1) Plaintif pertama dan pengikut-pengikutnya telah berpindah keluar secara berperingkat-peringkat dari rumah panjang lama ke rumah panjang baru. Mereka berpindah keluar dengan persetujuan penduduk-penduduk lain di rumah panjang lama tersebut. Plaintif pertama dan 69 yang lain tidak membayar sebarang *tunggu* tetapi hanya menyediakan *genselan* kepada penduduk-penduduk rumah panjang lama mengikut Adat Iban, adat-adat dan tradisi-tradisi. Oleh itu, mereka tidak lagi memiliki rumah panjang lama. Di bawah Adat Iban, mereka tidak lagi mempunyai suara atau hak ke atas rumah panjang tersebut. Hak mereka adalah sekadar mengambil kayu dari bilik dan ruai mereka sendiri selepas rumah panjang tersebut telah dibuka (lihat perenggan 16 & 18).

(2) Plaintif-plaintif tidak hadir dan tidak juga terlibat dalam keputusan pada mesyuarat penduduk-penduduk rumah panjang lama untuk merobohkan rumah panjang lama dan membina rumah panjang baru di tapak rumah panjang lama. Plaintif pertama telah mengadu kepada defendan-defendan dan mendiang penghulu tetapi mendiang penghulu sekali lagi meluluskan perobohan rumah panjang yang lama dan bagi rumah panjang yang baru untuk dibina. Plaintif-plaintif telah menarik balik guaman terhadap mendiang penghulu dan adalah tersirat bahawa mendiang penghulu adalah betul dalam meluluskan keputusan penduduk-penduduk rumah panjang lama tersebut (lihat perenggan 20).

(3) Tiada asas bagi plaintif-plaintif untuk membantah keputusan penduduk-penduduk rumah panjang lama yang telah diluluskan oleh mendiang penghulu kerana plaintif-plaintif tidak lagi memiliki rumah panjang lama. Perkara-perkara ini tidak menjadi asas untuk menghalang defendan dan penduduk-penduduk rumah panjang lama daripada

merobohkan rumah panjang lama kerana plaintif-plaintif tidak mempunyai apa-apa hak ke atas rumah panjang lama di bawah Adat Iban (lihat perenggan 21).]

Legislation referred to

Adat Iban Order 1993 ss 68, 70

Robert Ayu (Jaini Robert, Lau & Co Advocates) for the plaintiffs.
Musa Dinggat (Musa Dinggat & Co Advocates) for the defendants.

Stephen Chung J:

[1] The plaintiffs have withdrawn this suit against *penghulu* Changgai ak Moan ('the deceased') as the first defendant. Lajan @ Telajan ak Luyoh is the remaining defendant in this suit.

[2] The plaintiffs complained that in February 2012, the defendant and others commenced to demolish the longhouse without first informing him and the other occupants who previously resided at the old longhouse at Sg Brit Lama, Marudi and who are currently residing at Rh Randie. The plaintiffs pray that the defendant by himself his agents or servants or otherwise be restrained and that an injunction be granted restraining the defendant and others from demolishing the old longhouse and for damages caused to the longhouse.

[3] The plaintiff was the *tuai rumah* of the longhouse at Sg Brit Lama. The plaintiff testified that he and 69 others are the occupants and owners in the longhouse at Sungai Brit Lama. He said that the longhouse at Sungai Brit Lama, was built in early 1974.

[4] The plaintiff testified that on 18 February 1999 the *jawatankuasa kemajuan kampung* ('JKKK') of the longhouse intended to build a new longhouse to replace the existing longhouse at Sungai Brit Lama. He said that the plan was put on hold because some of the residents objected to the plan and some of the residents of the longhouse did not have sufficient fund to demolish and relocate the occupants and their families while waiting for the new longhouse to be completed. He said the late Pemanca Eddie told them the old longhouse must be maintained, repaired and not to demolish or dismantle it.

[5] In February, 2010, the plaintiff and some of them ie the plaintiff and 69 others, decided to build the new longhouse near to the existing longhouse. He said that after the new longhouse was completed, they stayed in the new longhouse called Rumah Randie, at Sungai Brit, Marudi but that they continued to live and maintain their old *bilik* at the old longhouse at Sungai

Brit Lama. He said that they stayed there at times, reared their animals at the old longhouse and continued to pay the utility bills.

[6] The plaintiff said that on 31 August 2011 he received a letter from the defendant of his intention to demolish the old longhouse and to rebuild a new longhouse at the site of the old longhouse at Sungai Brit Lama. The plaintiff complained that *penghulu* Changgai ak Moah gave instructions to demolish the old longhouse. The plaintiff wrote to the defendant objecting to the demolition of the longhouse because they ie the 69 residents and himself of Rh Randie never consented to the old longhouse to be demolished and rebuilt.

[7] On 23 February 2012, the plaintiff, through his appointed solicitors, wrote to the late *penghulu* Changgai ak Maoh and the defendant to stop demolishing the longhouse. The plaintiff complained that on 3 April 2012 the late *penghulu* Changgai issued another letter to proceed with the demolition of Rh Brit Lama.

[8] The plaintiffs maintained that they did not move out from the old longhouse. They contended that they did not move out of the area under the *penghulu* because they only moved to the new longhouse which is about 100 metres from the old longhouse. He said that all those who moved to the new longhouse had a meeting with the late Pemanca Eddie to inform the late Pemanca Eddie that they would move to the new longhouse but maintained their *bilik* at the old longhouse.

[9] The defendant testified that when the plaintiff and his followers moved out from the old longhouse in February 2010, the plaintiff and his followers emptied all their belongings including their *dapur* (kitchen) and from their *bilik*. The defendant said that they never re-occupied or maintained their *bilik* since then. The defendant said that under Iban *adat*, once the plaintiff and his followers moved out from the longhouse, they have no more rights to the former longhouse. He said that their only rights to the longhouse, if it was dismantled, they could retrieve the timber from their own 'bilik' and 'ruai'. The defendant said that after the plaintiff and his followers moved out from the longhouse of Sg Brit Lama, the defendant was elected by the remaining residents to be the new *tuai rumah* of the longhouse at Sg Brit Lama.

[10] The defendant contended that when the plaintiff and his followers moved out of the longhouse at Sg Brit Lama and built their new longhouse Rh Randie, the plaintiff and his followers have severed their ties and connections with the longhouse at Sg Brit Lama and have no more rights to their bilik in the old longhouse under Iban customs and traditions. The defendant submitted that the plaintiff and his follower, when they moved out, could have asked or arranged for some of their children to stay back and continue to occupy their

bilik in the old longhouse at Sg Brit Lama. It was submitted that if they had done that, it would signal their intentions and rights to continue to occupy their *bilik* at the old longhouse but they failed to do so.

[11] The Adat Iban Order 1993 has been *gazetted* and came into operation on 1 June 1993. It is applicable to all Ibans resident in Sarawak. Section 68 of the Adat Iban Order 1993 states that whoever moves out of a longhouse without the prior approval of the district officer or a *penghulu* of the area or *tuai rumah* shall each be fined two *pikul* and shall provide a *tunggu* of 200 *mungkul* and *genselan* of consisting of a pig, *kering semengat* and *kurung semengat*. If a *tuai rumah* moves out of a longhouse without prior approval of the district officer or a *penghulu*, he shall be fined three *pikul* and shall provide a *tunggu* of 300 *mungkul* and *genselan* as above.

[12] Section 70 provides that whoever moves out a room shall provide *genselan* consisting of a pig, *kering semengat* and *kurung semengat*. In addition, he shall maintain the room or find another family to live in it, failing which he shall be fined one and a half *pikul* and provide a tunggu of 150 *mungkul*.

[13] Mr Empeni Lang ('DW10') was previously a district officer, then the resident of Bintulu, the CEO of Rascom and finally he was the Chief Registrar of the Native Courts Sarawak. DW10 is well versed in Iban *adat* and customs. He referred to the Iban version of s 68 of the Adat Iban. The Iban version of s 68 which is applicable, in the event the English translation is not correct, provides that if a departing group leave a longhouse amicably no fine will be imposed, the group only have to give *genselan*. He said that in this case since the plaintiffs have moved out amicably, they were not required to pay any tunggu but to give *genselan*. He was of the opinion that since no fine was imposed and *genselan* had been given, there was implied consent that they could move out from the old longhouse.

[14] The plaintiffs had moved out from the old longhouse. TR Randie, being the *tuai rumah* of the old longhouse at that time, was not in a position to approve himself and the other 69 residents to move out from the old longhouse. The defendant at that material time was not the new *tuai rumah* of the old longhouse and was not in a position to approve. Such approval must be given by the district officer or the *penghulu* of the area. There was no evidence that the plaintiffs had moved out from the old longhouse with the approval of the district officer or the *penghulu* ie in this case the district officer Mr Joseph Belayong and the late *penghulu* Changgai ak Maoh. There was no evidence that TR Randie had moved out from the old longhouse with the approval of the district officer or the late *penghulu* Changgai.

[15] It is not in dispute that the plaintiff Randie ak Bundan became the *tuai*

rumah of the new longhouse described as Rh Randie. It is obvious that TR Randie has ceased to be the *tuai rumah* of the old longhouse at Sg Brit Lama.

[16] The evidence before the court established that the plaintiff TR Randie and his followers had moved out in stages from the old longhouse to the new longhouse. They moved out with the agreement of the other residents of the old longhouse. It was not in dispute that the plaintiff and the 69 others did not pay any 'tunggu' but only provided 'genselan' to the residents of the old longhouse in accordance with Iban *adat*, customs and traditions.

[17] The plaintiffs continued to pay the electricity bills and rates at the old longhouse and did not inform the authorities nor cancelled the bills at the old longhouse. The electricity bills were for monthly minimum charges ie they did not use electricity at the old longhouse. The evidence showed that the plaintiffs did not stay or live in their *bilik* at the old longhouse since they moved out in February 2010. The evidence showed that the plaintiffs did not cook in their kitchen or *dapur* in the old longhouse since they moved out in February 2010. They were not invited to attend and they did not attend any meeting of the JKKK of the old longhouse since they moved out. They did not perform any rituals or ceremonies celebrated for any Iban festivals at the old longhouse. They only visited the old longhouse or were invited to celebrations at the old longhouse sometimes. The two photographs at p 9 of BOD3 clearly showed that these two *biliks* were empty, not maintained and were not lived in by any of the plaintiffs who had moved out from the old longhouse.

[18] Based on the evidence and Adat Iban, the plaintiffs have moved out from the old longhouse and were no longer the residents of the old longhouse. Since February 2010, they lived and belonged to the new longhouse Rh Randie. They no longer belonged to the old longhouse. Under Adat Iban, they have no more say or rights to the old longhouse. Their only rights are to take the timber from their own *bilik* and *ruai* after the longhouse has been dismantled.

[19] In August, 2010, the defendant and the residents of the old longhouse decided to dismantle or demolish the old longhouse in order to build a new longhouse at the site of the old longhouse because the old longhouse was too old and not cost-effective to repair and maintain it. It was not in dispute that the late *penghulu* Changgai ak Maoh approved the old longhouse to be demolished and a new longhouse to be built at the site of the old longhouse. The evidence showed that the late penghulu had assisted them to obtain aids from the district office to rebuild the new longhouse.

[20] It was obvious that the plaintiffs did not attend nor were involved in the decision at the meeting of the residents of the old longhouse to demolish the old longhouse and to build the new longhouse at the site of the old longhouse.

TR Randie had complained to the defendant and the late *penghulu* but the late *penghulu* again approved the demolition of the old longhouse and for the new longhouse to be built. The plaintiffs had withdrawn the suit against the late *penghulu* and it was implicit that the late penghulu was right to approve the decisions of the residents of the old longhouse.

[21] There is no basis for the plaintiffs to object to the decisions of the residents of the old longhouse which were approved by the late *penghulu* because the plaintiffs no longer belong to the old longhouse. These are also no basis to restrain the defendant and the residents of the old longhouse from demolishing the old longhouse because the plaintiffs do not have any rights to the old longhouse under Adat Iban.

[22] For the reasons given, the plaintiffs' prayer for the injunction and for damages be dismissed with costs of RM15,000. The interim injunction pending the hearing and determination of this action is hereby discharged.

Application dismissed with costs of RM15,000.

Reported by Afiq Mohamad Noor